

The Intelligencer.

Entered at the Postoffice at Wheeling, W. Va., as second-class mail matter.

FRANK & CAMPBELL, PUBLISHERS AND PROPRIETORS.

Office: Nos. 25 and 27 Fourteenth Street.

MONDAY MORNING, NOVEMBER 22.

The Constitutional Amendments and the Question of Their Adoption.

It has been assumed, without argument, as a plain proposition, by several newspapers, in speaking of the vote on the amendments, that ballots having on them the expressions, "For Ratification" and "For Rejection," should not be counted. But an examination of the law will show that this proposition is not so plain, but on the contrary probably erroneous. Now, it may be granted that under the common law of elections, where a voter has left on his ballot the names of more than one candidate for the same office, it is to be rejected as to that office for uncertainty, because the voter has failed to express his choice clearly, for it is not certain for which he intended to vote. But this rule does not prevail in West Virginia. Sec. 27, chap. 113, acts 1872-73, of the General Election law, provides that "if any ballot be found to contain more than the proper number of names for any office that, first on the ballot shall only be counted as to said office."

This changes the common law. Here the Legislature has presumed that the voter read his ballot as far as the first name, and being satisfied with that first name, and being likely intended to vote for the first name than the second, or than not to vote at all. For some reason the Legislature has chosen to fix this as a rule, that the first name on the ballot only shall be counted. Is this the rule governing the election on the amendments? If so, then the first expression on the ballot, whether "For Ratification" or "For Rejection," should be counted. Now, the act submitting the amendment, after providing that the question of the ratification or rejection of the amendments should be voted on at the general election, provides: "That said election at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained, by the same officers and in the same manner as the election of members of the Legislature is superintended, conducted and returned, and the result thereof ascertained, at said election. And all provisions of the law relating to general elections, as far as applicable, shall apply to the election held under the provisions of this act, except where it is herein otherwise provided."

Here the Legislature applies to this contest between Ratification and Rejection the same rules of procedure, so far as they can be made to apply, as between candidates for the Legislature; establishes an analogy between them; assimilates one to the other; makes one the guide for the other; the election as to the one is to be superintended in the same manner, conducted in the same manner, and its result ascertained in the same manner as the other. Not content with this, out of greater care, it declares that all provisions of law relating to general elections, as far as applicable, apply to the election on the amendments. In drafting this act the Legislature did not deem it necessary to make the act endless by incorporating minute details as to the innumerable points arising in elections, but seeing no reason why this election between those two impersonal candidates, Ratification and Rejection, each representing opposite ideas as distinctly as two competing candidates for the Legislature represent distinct persons, should not be held under the same rules, simply declared that the election on the Amendment should be superintended, conducted, returned, and its result ascertained in the same manner as in the case of candidates for the Legislature, and made the general election law applicable to it. Does not the act make candidates of Ratification and Rejection by assimilating them to candidates for the Legislature? Now, in ascertaining the result and making returns of an election between candidates for the Legislature, a ballot with two names for that office is counted for the first name. Why? Because the general election law says so. In that "manner" the election is to be conducted and its result ascertained. So, when a ballot is found having the two expressions, "For Ratification" and "For Rejection," count it for the first expression appearing on it. Why? Because, it was done as to candidates for Legislature. Such is the manner of counting such a ticket for that office, and such the manner of ascertaining the result as to it; and the act says the result of the election on the amendment shall be ascertained in the same manner as in case of members of the Legislature. If in two things are identified and assimilated by the act in other respects, why separate them in this? If they are the same in some respects for election purposes, why separate them in this? This act of counting a ticket, determining its effect, is essentially a part of the act of ascertaining the result, and pertains to the manner of ascertaining it and returning it. Under the act why not adopt the same process and manner of counting a ticket and ascertaining the voter's choice as between candidates for the Legislature? When such was the rule as to two names on a ticket for the Legislature, and it must have contemplated the probability of both expressions on tickets in the amendment election. What may reasonably be supposed to have been intended by the Legislature, to throw away the vote or count it for the first expression? Also, the voters must be supposed to have known the rule of counting the first name as to candidates, and that it was necessary to strike out other names if the design was to vote for the first. Is it not likely they thought the same rule would apply in the election on the amendments?

So it seems the position that such ballots should be rejected, is not so plain, but to say the least, is debatable, and if anything it would seem most consonant with law and the probable intent of the Legislature and the voter, to count it for the first expression rather than throw it away.

Another proposition advanced against the adoption of the amendment is, that to adopt it there must be for its ratification not only a majority of all the votes cast for ratification and rejection, but that ratification must have a number greater than half of the highest number cast for any office at the same election. This proposition is grossly erroneous. It is sought to be based on a clause in the act submitting

the amendment, reading, "If a majority of the votes cast at said election be for ratification, the said proposed amendment shall be in force and effect from the time of such ratification." Now, what election is referred to in the language, "if a majority of the votes cast at said election be for ratification?" Plainly the election on the amendment, not the election for Governor or other officer, elections not provided for or contemplated in this act, but provided for and born of other laws. This expression, "at said election," occurs at several places in the act. It starts out by saying, "the question of the ratification or rejection" of the amendment shall be submitted to vote, and it provides the form of ballot, and says "No ballot shall be rejected in ascertaining the result of said election because all the prescribed words are not on it." What election is meant in this clause by the words, "said election?" Plainly the election on the amendment. Again, it says, when the result of said election shall be ascertained, the officers shall sign certificates of the result. What election is here meant? None other than that on the amendment. Then it says the certificates shall contain the true result of said election. What election? Why that on the amendment. Then it says that when the certificates from the commissioners at the court-houses of the several counties go before the Governor, it shall be his duty to ascertain therefrom the result of said election in the State. Ascertain the result of what election? Manifestly the election on the amendment. Just the same election as is referred to in the same section in the clause reading, "if a majority of the votes cast at said election be for ratification," the said proposed amendment shall be in force and effect from the time of such ratification."

Therefore, if we were governed by no other law than this act alone, we should be forced to conclude from its manifest construction, that it means, that if a majority of the votes cast on the amendment, whether that be a majority of the votes cast in the State for any office or not, the door was open to all voters to express their will. Those silent gave consent; at least, they can not be treated as saying "No," and if a majority of those speaking on the question say "Yes," it is enough. But this act, plain as it is, is not the only law on the point. There is another law in pari materia, to be read along with this act, not only as a light by which to construe the Legislature's intent in the act of submission, but to override that act if, when properly construed, it be in conflict with the constitution. The Constitution of 1872, Article 14, Sec. 2, which regulates the mode of amending the constitution, and is the supreme law on the subject of amendments, after requiring the Legislature to submit by a law, an amendment to the people, declares: "And if a majority of the qualified voters voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification."

If there were any question under the act of the Legislature, this clause of the Constitution settles it. It holds a majority of those voting on the amendment sufficient to ratify, though it may be a minority of all the votes cast on some other question or for some office. But if the act of the Legislature were not plain; if it were capable of conflicting constructions; that construction should be given it, that intent should be ascribed to the Legislature, which would harmonize with the Constitution, not one which would violate it. It is undoubted law that "whenever an act of the Legislature can be so construed and applied as to avoid a conflict with the Constitution and give it the force of law, such construction will be adopted by the courts." (Cooley Con., Limitations, 185.) Our Court of Appeals has approvingly quoted this principle in 8 W. Va. Reports, p. 626. And the same high court has quoted as good law in the celebrated Bridges-Shallcross case, the New Hampshire decision, that it is a duty "to construe every act of the Legislature as to make it consistent, if possible, with the provisions of the Constitution, without stopping to inquire what construction might be warranted by the natural import of the language used, or W. Va., 572. Therefore, the act must be construed to intend the same thing as the Constitution, because it is readily capable of that construction, and that is that a majority of the votes cast on the amendment is sufficient to adopt it, though it may not be a majority of the number cast on some other question or for some office. And finally, if the act under proper construction could be held to differ from the Constitution, the rule of the Constitution would prevail and override the rule of the act."

Rev. R. R. Burns, of Manassas, Pa., says: "Curtis Pills are a true and reliable remedy for the result of the election on the amendment shall be ascertained in the same manner as in case of members of the Legislature. If in two things are identified and assimilated by the act in other respects, why separate them in this? If they are the same in some respects for election purposes, why separate them in this? This act of counting a ticket, determining its effect, is essentially a part of the act of ascertaining the result, and pertains to the manner of ascertaining it and returning it. Under the act why not adopt the same process and manner of counting a ticket and ascertaining the voter's choice as between candidates for the Legislature? When such was the rule as to two names on a ticket for the Legislature, and it must have contemplated the probability of both expressions on tickets in the amendment election. What may reasonably be supposed to have been intended by the Legislature, to throw away the vote or count it for the first expression? Also, the voters must be supposed to have known the rule of counting the first name as to candidates, and that it was necessary to strike out other names if the design was to vote for the first. Is it not likely they thought the same rule would apply in the election on the amendments?"

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NEW ADVERTISEMENTS.

FOR RENT—THE HOUSE 928 MAIN STREET, occupied by Governor Johnson. Possession April 1, 1881. ROBERT C. DALZIELL, 9072.

STEAM LAUNDRY, No. 1413 MAIN STREET, WHEELING, W. VA. All kinds of work done on short notice at reasonable rates. Give us a trial. BAKER & PRIMBON, 9072.

NOTICE. The LaBelle Building Association will hold its annual election of directors to Ketch's Hall, on MONDAY, DECEMBER 6, 1880, at 7 o'clock p. m. Nominations to be made at the meeting preceding the election. See Article 19, Section 3, of the By-Laws. W. C. HANDLAN, President, H. C. GLANCH, Secretary, 9072.

GERMAN STUDENT LAMPS. Just received, another lot of the latest improved German Student Lamps, in Silver and Brass, at NESBITT & HOBBS, 1212 Market Street, 9072.

SPARE RIBS, Tenderloin, Back Bones, Pigs' Feet, Etc., To-day, at D. C. LIST, JR., 28 Fourteenth Street, 9072.

FOR RENT—The three-story brick building, with store-room on first floor, formerly occupied by Buchanan & Dunn, situated on the west side of Market street, near Second Ward Market. The building is adapted and now used as a boarding house by a good tenant, who will be willing to rent it with a view of only occupying the store room. The fixtures, such as stoves, etc., can be purchased from present occupant cheap. H. Z. SHRYVER, 1211 Main St., 9072.

REGULAR TUESDAY PACKET. For Parkersburg, Fumery, Gallipolis, Francis, Huntington, Portsmouth, May, June, Cincinnati and Louisville, the elegant passenger steamer "CHAS. MUELLERMAN, Master. ED. MUELLERMAN, Clerk. Leaves Tuesday, November 23, 8 p. m., positively. Passengers and freight received through to all points West and South. For freight, or to apply on board or at C. H. BOVIER & SONS, 9072.

SKATING RINK. WILL BE CLOSED THIS WEEK OR Until Further Notice. 9072.

THE GIANT RIDING SAW MACHINE. This Wonderful Improved SAW MACHINE is warranted to saw 2-foot logs in three minutes, and more cut wood or logs of any size in less than two hours than any other saw in use. Any Farmer and Lumberman needs one. AGENTS WANTED—Crested and Crested Free. Address: FARMER'S MANUFACTURING CO., 174 Elm Street, Cincinnati, O. 9072.

OPERA HOUSE. Friday & Saturday, Nov. 26 & 27. The Talented Comedian GEORGE HOLLAND, And a specially selected cast in the New and Highly Successful Comedy Our Gentlemen Friends!

As played by them at the Standard Theatre, New York, and received by large and enthusiastic audiences. Admission 50 and 75 cents. No extra charge for reserved seats. Seats on sale at F. W. BAUMER's music store. Sale to commence Wednesday, November 24, at 8 p. m. Matinee prices 50 and 75 cents. 9072.

"WE'RE HAPPY AT OUR HOME." WHY? "Because we have PLENTY TO RENT, PLENTY TO SELL, We Read The American Agriculturist, and the Thousands of Good Hints and Suggestions help us to think, plan and work better and more profitably. Their Wife, and please and instruct us in every way. Men, Women, and Children—ought to have it." Terms for Vol. 40 (1880), \$1.50; Three, \$4; Four, \$5; and of this year free. See Specimen for C. C. Orange Judd Co., Publishers, 245 Broadway, NEW YORK.

MONDAY, NOVEMBER 15th. C. P. BROWN'S Grand Auction Sale!

Positively Retiring From Business. DIAMONDS, WATCHES, JEWELRY, Silver and Plated Ware, Clocks, Cutlery, Guns, Pistols, &c.

Having determined to retire from the jewelry business, I will positively sell my entire stock, without reserve, commencing on Monday Morning, November 15, 1880, at 10 o'clock, continuing until the entire stock and fixtures are sold, every morning at 10 o'clock, afternoon at 2:30 o'clock, evening at 7:30 o'clock.

The stock consists of a large and well selected line of such goods as are only kept in first-class jewelry stores. You are respectfully invited to attend these sales, and secure rare bargains. The sale is positive and without reserve. The reputation for Fair Dealing, which has enjoyed for twenty-seven years, will be strictly maintained. The sale will be conducted by Col. J. M. Rutherford, of Philadelphia.

C. P. BROWN, No. 51 Twelfth St., Wheeling, W. Va. 9072.

ATTORNEYS. J. W. COWDEN, ATTORNEY AT LAW, Office, No. 1222 Charleston St., Wheeling, W. Va. Prompt attention to all business. 907-daw

J. W. VANDERVOET, ATTORNEY AT LAW, Office, No. 1222 Charleston St., Wheeling, W. Va. Prompt attention to all business. 907-daw

HANNIBAL FORBES, ATTORNEY AT LAW, Office, Custom House, Wheeling, W. Va. 9072.

JAMES P. ROGERS, ATTORNEY AT LAW, No. 1207 Charleston Street, opposite the Court House, Wheeling, W. Va. 9072.

DANIEL LAMB, ATTORNEY AT LAW, No. 1213 Market Street, (over City Bank), Wheeling, W. Va. 9072.

JOSEPH KLEBE, Superintendent, 9072.

AMUSEMENTS.

OPERA HOUSE. Monday and Tuesday, November 22 and 23. A COMPLETE SUCCESS! SECOND SEASON! CLINTON HALL'S STRATEGISTS!

THE JOLIEST COMEDY ON RECORD. Will be presented with every attention to detail, and every part supported by thorough artists. New York Herald—"The Comedy of Errors Intended." New York Times—"Brilliant comedy with laughter-moving qualities." Boston Herald—"A very order. Boston Post—"The many grotesque situations kept the audience in a constant roar of laughter." Philadelphia Times—"A rollicking comedy that is wholly clean and decent." Northwesterling the large expense of this company no advance in price. Admission 50 and 75 cents. No extra charge for reserved seats. On sale at F. W. BAUMER's music store. Sale to commence Saturday, November 20, at 8 a. m. 9072.

OPERA HOUSE. Wednesday Evening, Nov. 24th. Engagement of the popular Actor and Champion Rider of the West and Mr. FRANK I. FRAYNE.

Supported by a powerful company of dramatic artists, in the California Sensational Drama of SI SLOCUM!

Introducing his wonderful "Dog Jack," VALUED AT \$10,000. Admission 50 and 75 cents. No extra charge for reserved seats. Seats on sale at F. W. BAUMER's music store. Sale to commence Monday, Nov. 22, at 8 p. m. 9072.

OPERA HOUSE. Thursday Matinee and Evening, NOVEMBER 25. ALWAYS THE BEST MME. RENTZ'S MINSTRELS.

The best company ever organized. A wealth of new novelties. Every act new. Every song new. Every sketch new. An entirely new burlesque entitled Penn's Aunts Among the Pirates!

A world of fun. A wealth of novelty. Admission 50 and 75 cents. No extra charge for reserved seats. Seats on sale at F. W. BAUMER's music store. Sale to commence Wednesday, Nov. 24, at 8 p. m. Matinee prices 50 and 75 cents. 9072.

PHOTOGRAPHY. Parson's Photographic Studio, 1205 Market Street. THE BEST AND CHEAPEST.

AUTOGRAPH ALBUMS, PHOTOGRAPH ALBUMS, PICTURE FRAMES, etc., in the city. PLUMMER'S GALLERY, 1185 MAIN ST.

PETITE CARDS. THE CUTEST THING OUT AT HIGGINS' CRAYON PORTRAITS AT Myer's Art Studio, mh3 NO. 2154 MAIN STREET.

CHINA AND QUEENWARE. STUDENT'S LAMPS. I have received another lot of the best Brass, German Student Lamps to be found anywhere in the city at the lowest figures at CHRIS. WINCHER'S, No. 1064 Main Street. 9072.

BIRDSEED CUPS. Just received, a large lot of Canary Birdseed Cups, to hang on cages, at CHRIS. WINCHER'S, No. 1064 Main Street. 9072.

Glass, Queensware, &c. If you want Cheap China, Glass and Queensware call at No. 1064 Main, lower than any other house in the city. All goods warranted. CHRIS. WINCHER'S, No. 1064 Main Street. 9072.

NEW GOODS. Just opened, a fine line of FANCY GOODS, DECORATED DINNER AND CHAMBER WARE, &c. At low prices. JOHN FRIEDL, 1191 Main Street. 9072.

PIANOS AND ORGANS. ACADEMY OF MUSIC. (Washington Hall.) FOR RENT From this date, (NOVEMBER 6,) until NOVEMBER 15, inclusive. All succeeding dates for season taken. Apply to C. Y. LUCAS, 1227 Market Street. 9072.

PIANO FOR SALE. A good 7 1/2 Octave Piano, used but three months, at a great bargain. For sale by F. W. BAUMER, 1205 Market Street. 9072.

STEAMERS. INMAN LINE ROYAL MAIL STEAMERS—NEW YORK TO QUEENSTOWN AND LIVERPOOL—NOTICE—The steamer of this line, the "Lafayette," leaves for Liverpool at 11 o'clock, Monday, November 22, at 11 a. m. From New York, Thursday, December 3, at 7:30 a. m. From New York, Saturday, December 5, at 11 a. m. From New York, Monday, December 7, at 11 a. m. From New York, Wednesday, December 9, at 11 a. m. From New York, Friday, December 11, at 11 a. m. From New York, Sunday, December 13, at 11 a. m. From New York, Tuesday, December 15, at 11 a. m. From New York, Thursday, December 17, at 11 a. m. From New York, Saturday, December 19, at 11 a. m. From New York, Monday, December 21, at 11 a. m. From New York, Wednesday, December 23, at 11 a. m. From New York, Friday, December 25, at 11 a. m. From New York, Sunday, December 27, at 11 a. m. From New York, Tuesday, December 29, at 11 a. m. From New York, Thursday, December 31, at 11 a. m. From New York, Saturday, January 2, at 11 a. m. From New York, Monday, January 4, at 11 a. m. From New York, Wednesday, January 6, at 11 a. m. From New York, Friday, January 8, at 11 a. m. From New York, Sunday, January 10, at 11 a. m. From New York, Tuesday, January 12, at 11 a. m. From New York, Thursday, January 14, at 11 a. m. From New York, Saturday, January 16, at 11 a. m. From New York, Monday, January 18, at 11 a. m. From New York, Wednesday, January 20, at 11 a. m. From New York, Friday, January 22, at 11 a. m. From New York, Sunday, January 24, at 11 a. m. From New York, Tuesday, January 26, at 11 a. m. From New York, Thursday, January 28, at 11 a. m. From New York, Saturday, January 30, at 11 a. m. From New York, Monday, February 1, at 11 a. m. From New York, Wednesday, February 3, at 11 a. m. From New York, Friday, February 5, at 11 a. m. From New York, Sunday, February 7, at 11 a. m. From New York, Tuesday, February 9, at 11 a. m. From New York, Thursday, February 11, at 11 a. m. 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